SUPREME COURT OF THE UNITED STATES.

No. ~~309.~~ 476.102.

THE UNITED STATES, APPELLANTS,

vs.

THE SCHOONER REFORM, JOHN BAILEY, CLAIM'T, AND NICHOLAS G. PENNIMEN, CLAIM'T OF THE CARGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At the circuit court of the United States, for the fourth circuit in and for the Maryland district, began and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable R. B. Taney, Chief Justice of our Supreme Court; Wm. F. Giles, judge Maryland district; Wm. Price, esq., att'y; Washington Bonifant, esq., marshal; Thomas Spicer, clerk.

THE UNITED STATES
vs.
SCHOONER REFORM AND CARGO.

Be it remembered, that heretofore, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and sixty-two, the United States of America, by William Price, attorney of the United States for the Maryland district, filed in the circuit court here the transcript of a record from the district court of the United States, in and for the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a special district court of the United States, in and for the Maryland district, held at the city of Baltimore on the first day of June, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable William F. Giles, judge Mary'd dis't; William M. Addison, esq., attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk.

2 Among other were the following proceedings, to wit:

THE UNITED STATES
vs.
SCHOONER REFORM AND CARGO.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

[SEAL.] To the marshal for the Maryland district, greeting:

We command you, that you attach, seize, take and safely keep, schooner Reform and cargo, to answer the libel of the United States of America, and how you shall execute this precept you make known

to us in our district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the 19 day of May, inst., and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-two.

W. M. A. Issued 9 day of May, 1862.

THOS. SPICER, *Clerk.*

Return.

"Atta'd" May 8, 1862, and advertised according to law.

W. BONIFANT,
U. S. Marshal.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Whereas, on the 8th day of May, A. D. 1862, Wm. M. Addison, United States district attorney, filed a libel in the district court of the United States, in and for the Maryland district, against the 3 schooner Reform and cargo, in a cause of forfeiture:

And whereas, by virtue of process in due form of law, to me directed, returnable on the 19 day of May, 1862, I have seized and taken the said schooner Reform and cargo, and have the same in my custody:

Notice is hereby given, that a district court of the United States will be held at the United States court-room in the city of Baltimore, on the said 19 inst., for the trial of the said premises, and the owner or owners, and all persons who may have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decre should not pass as prayed.

WASHINGTON BONIFANT,
United States Marshal.

Agreement.

In the district court of the United States, district of Maryland.

THE UNITED STATES
vs.
SCHOONER REFORM AND CARGO.

It is agreed in this case, that the value of the cargo in this case shall be taken to be five thousand five hundred dollars, and that stipulation about to be entered shall be according to said valuation, and the value of the said schooner shall be taken to be six hundred dollars, and the stipulation about to be entered shall be according to said valuation.

June 2, 1862.

WILLIAM PRICE,
Dis't Att'y.

GEO. W. DOBBINS.
Proctor for Claimants.

4 *Stipulation.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered, that on this third day of June, in the year of our Lord one thousand eight hundred and sixty-two, before the district court of the United States in and for the Maryland district, personally appeared William R. Penniman and Chas. F. Mayer (of Louis,) of the said district, in their proper persons, and submit themselves to the jurisdiction of the said court, and consent to bind themselves, and do acknowledge themselves, their heirs, executors and administrators, to be bound in the sum of twelve thousand two hundred dollars lawful money of the United States, for the claimants of the schooner Reform and cargo, unto the United States of America, to perform and fulfil the final order and decree of the said district court; and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit in and for the Maryland district; and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the district court of the United States, wherein the said United States of America are libellants, and the claimants of the schooner Reform and cargo are respondents; and unless they so do, they severally consent
5 that execution shall issue against them, their heirs, executors and administrators, their goods, chattels, lands and tenements, wheresoever found or to be found.

Taken and acknowledged in open court.

THO. SPICER, *Cl'k Dis't Co'rt.*

Libel.—In Admiralty.

UNITED STATES OF AMERICA,
District of Maryland.

To the honorable William F. Giles, judge of the district court of the United States for the Maryland district:

William Meade Addison, esq., attorney of the United States for the district aforesaid, in the name and in behalf of the United States, propounds and gives the said judge to be informed and understand, that on the 7th day of May, 1862, in the port of Baltimore, Jno. T. McJilton, surveyor of the port of Baltimore, in the district aforesaid, did seize a certain schooner, to wit, the Reform and cargo, and now hath the same in his custody, as being forfeited to the United States for the causes hereinafter mentioned; and the said att'y informs and articulately propounds:

First. That the President of the United States, in pursuance of the provisions of the second section of the act of Congress entitled An act to provide for calling forth the militia, to execute the laws of the Union, suppress insurrection and repel invasions, and to repeal the

act now in force for that purpose, approved Feb. 28, 1862, had, prior to the said 7th day of May, 1862, called forth the militia to
6 suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents did fail to disperse by the time directed by the President.

Second. That the said insurgents did claim to act under the authority of divers States of the United States, and their claim is not and hath not been disclaimed or repudiated by the persons exercising the functions of the government in such State or States, or in the part or parts of such State, wherein the said combinations exist, nor have such insurrections been suppressed by the States wherein the same exists.

Third. That the President of the United States, by proclamation, declared that the inhabitants of certain States were in a State of insurrection against the United States.

Fourth. That the States so declared to be in insurrection were Georgia, South Carolina, Tennessee, Virginia, North Carolina, Texas, Arkansas, Mississippi and Florida, except the inhabitants of that part of Virginia lying west of the Alleghany mountains.

Fifth. That by reason of the President's all commercial intercourse between the aforesaid region of country, so in insurrection, and the rest of the United States, and the respective inhabitants thereof, ceased and became unlawful, and all goods and chattels, wares and merchandise, coming from said State or section into other parts of the United States, and all proceedings to such State or section by land or water, together with the vessel or vehicle
7 conveying the same, become forfeited to the United States.

Sixth. That the said condition of hostility hath ever since continued and still continues.

Seventh. That the said schooner Reform, at the time of her seizure aforesaid, was proceeding with her cargo to that part of the State of Virginia lying west of the Chesapeake bay, and *and* being, as aforesaid, in insurrection against the United States, and so proclaimed to be by the President of the United States aforesaid, whereby, and by force of the statute in such case made and provided, the said schooner Reform and cargo have become, and are, forfeited to the United States of America for the uses in said statute prescribed.

And the said attorney of the United States, in behalf of the United States, saith that all and singular the premises are true, of which due proof being made, he prays the usual process and monition of this court in this behalf, and that all persons interested in the said schooner and cargo may be warned to appear, and that, for the causes aforesaid, and others appearing, the said schooner and cargo may be condemned by the definitive sentence and decree of this court, as forfeited to the use of the United States, according to the form of the statute in such case made and provided.

WM. MEADE ADDISON,
Attorney of the United States.

Coasting manifest.

JAMES SULLIVAN.

8 Manifest of the cargo on board the *the* schooner Joe Hunter, whereof John Bayley is master, burthen 47 tons, bound from the port of Baltimore for Eastville and Cherrystone, Va.

No. of entry.	Packages and contents.	Shippers.	Residence.	Consignees.	Residence.
1	20 kegs of nails.....	N.G.Penniman	Balt.	A. Nothingham	Eastville.....
2	3 casks of hardware, 2 b'xs	.....do.....	.do.	..do	.....do.....
3	Bbl. of shovels, 11 boxes.	.....do.....	.do.	.....do	.....do.....
4	Smoking tobacco, 2 boxes.	.....do....	.do.	.....do	.....do.....
5	Champagne, 2 b'xs dry g'ds	.....do.....	.do.	.....do	.....do.....
6	5 boxes segars, 2 b'xs No. 1	.....do.....	.do.	.....do	.....do.....
7	Ions, 10 kegs of nails.....	.....do.....	.do.	Peter Bowden	.....do.....
8	3 boxes bottled whiskey..	.....do.....	.do.	.....do	.....do.....
9	6 baskets Champagne....	.....do.....	.do.	.....do	.....do.....
10	3 boxes dry goods.....	.....do.....	.do.	.....do	.....do.....
11	3 bbls. of shovels, 2.....	.....do.....	.do.	Severn Eyse	Cherrystone, Va
12	Boxes groceries, 2 boxes..	.....do.....	.do.	.....do	.....do.....
13	Segars, 1 pkge. liquor....	.....do.....	.do.	.....do	.....do.....

mark.
JOHN × BALEY.

Oath required by the 15th section of the coasting law.

I, Capt. Bailey, master of the schr. called the Joe Hunter, of Balto., do swear that the above manifest, which I now exhibit, contains a true account of the articles composing the whole cargo of the said schooner, which now are or at any time have been on board the said schooner, from the time of her departure from the port of Baltimore, from whence she first sailed.

I, John Baily, master or commander of the schooner called the Joe Hunter, of Balto., do swear to the truth of the within manifest, and that, to the best of my knowledge and belief, the goods, wares and merchandise of foreign growth or manufacture, therein contained, were legally imported, and the duties thereupon paid or secured. So help me God.

his
JOHN × BALEY.
mark.

9 DISTRICT OF MARYLAND, PORT OF BALTO.,
March 15, 1862.

John Bailey, master of the schooner Joe Hunter, having sworn, as the law directs, to the within manifest, consisting of articles of entry,

and delivered duplicates thereof, permission is hereby granted to the said schooner Joe Hunter to proceed to the port of Cherrystone and Eastville, in the state of Va.

Given under my hand at Baltimore, the day and year above mentioned.

C. M. JAMESON, *D. Collector.*

Endorsed: Exports, March 15, 1862.
Schooner Joe Hunter—tons 47, men 4.

Coasting manifest.

JAS. SULLIVAN, 4 men.

Manifest of the cargo on board the schooner Reform, whereof John Bailey is master; burthen 57 tons, bound from the port of Baltimore for Alexandria.

No. of entry.	Packages and contents.	Shippers.	Residence.	Consignees.	Residence.
1	25 box pin.....	E. Pratt & Bro....	Balt.	C. Creighton.	Alexandria, Va.
2	54 sacks salt.....	John Grason.....	.do.	J. Linsey...	.....do.....
3	20 blds. sugar.....	Woods, Bridgs & Co.	.do.	.....do	.....do.....
4	10 bags coffee.....	.....do.....	.do.	.....do	.....do.....
5	5 casks 2 box hair...	E. Jenkins & Son.	.do.	Ander	.....do.....
6	3 casks soda.....	Dallis Nebane....	.do.	Wheat & Bro.	.....do.....
7	10 bbls. whiskey....	Humlehouse & Co.	.do.	.....do	.....do.....
8	15 bbls. oil.....	H.W. Hooper & Co.	.do.	J. West.....	.....do.....
9	10 bbls, 5 box mds..	Colston & Brown..	.do.	G. Pooker...	Washington...
10	2 box dry goods....	G.W. Howard & Co.	.do.	C. Willson...	.....do.....
11	10 cases meds.....	Penniman & Bro..	.do.	F. Hgbsh....	Alexandria....
12	10,000 ft. w. p. lumber	Prese & Thomas..	.do.	J. Joiner....	Washington...
13					

his
JOHN × BAILEY.
mark.

10 *Oath required by the 15th section of the coasting law.*

I, John Bailey, master of the schooner called the Reform, of Baltimore, do swear that the within manifest, which I now exhibit, contains a true account of the articles composing the who cargo of the said schr. Reform, which now are, or at any time have been, on board the said schr., from the time of her departure from the port of Balto., from whence she first sailed.

I, John Bailey, master or commander of the schr. called the Reform, of Baltimore, do swear to the truth of the within manifest, and that, to the best of my knowledge and belief, the goods, wares and

merchandise of foreign growth or manufacture, therein contained, were legally imported, and the duties thereupon paid or secured. So help me God.

his
JOHN × BAILEY.
mark.

DISTRICT OF MARYLAND, PORT OF BALTIMORE,
3 *May*, 1862.

John Bailey, master of the schooner Reform, having sworn, as the law directs, to the within manifest, consisting of twelve articles of entry, and delivered duplicates thereof, permission is hereby granted to the said schr. Reform to proceed to the port of Alexandria, Va.

Given under our hand at Baltimore, the day and year above mentioned.

C. M. JAMESON, *D'y Collector.*
F. S. EVANS, *D'y Naval Officer.*

11 *First invoice.*

Invoice of merchandise on board the schr. Reform, May 15, when examined.

50 bbls. coal oil, (kerosene;) 12 hhds. caustic soda; 2 boxes prints, J. Berkley & Co.
1 box segars, cont'g 6,200 Espancala; 3,600 Superbia; 10,000 shucks; 1,400 L. H. C. ..... (H)
$112, 113, 114, 115, 116.
5 bbls. alum, ... "
1 do pill boxes, ... "
1 do tamien, ... "
16 do copperas, ... "
1 hlf. bbl. oil, ... "
2 do Scotch snuff, ... (N)
12 hlf. chests and 1 whole chest tea, ... (H)
36 boxes essence coffee, ... "
1 bag corks, ... (M)
4 boxes tartaric acid, ... (H)
19 do solidified lye, ... "
6 do vials, ... "
1 bundle paper, ... "
1 box croton oil, ... "
155, 156, 154.
3 boxes medicines (supposed to be croton oil,) ..... "
2 package wool cards (4 boxes,) .....
1 box copper rivets and burs, ...
1 do Jamaicaginger, ... (H)
1 do hartshorn, ... "
C. 152, 153.
2 do hydrarg, sub. mur. (calomel,) ..... "
1 do shoethread, hoop skirts, cotton, &c., &c., ... A. Creighton.

2 carboys vitriol, ... $109, 110.
1 box medicine, opium, nitrid potash, salts, tartar, flies & $93
1 do chloroform, ... $157, (H)
2 kegs litharge, ... "
1 box medicines: tannin, antimonia, chloroform, &c., ... "
4 boxes cont'g 16 sealed tin cans (contents unknown) .... "
12 2 do matches (large cases,) ..... "
2 do camphor, ... $92, "
1 box hooped skirts, &c. (no mark,) ..... "
1 do shoe thread, ... P $10, "
1 do essences of various kinds, ... $90, "
100 boxes tin plate, ...
64 do bars pig tin (banca,) .....
1 box hooped skirts, &c., ... (B)
11 bbls. whiskey, ... (H)
128 boxes Scotch and other snuffs, ... "
1 box surgical instruments, cupping apparatus, ... "
1 do borax, ... "
1 do refined alum, ... "
1 hlf. bbl. snuff in bladders, ... "
1 cask blue vitriol, ... "
115 sacks Liverpool salt (more or less,) ..... "
4 bags Rio coffee, ... "
1 bbl. crushed sugar, ... "
4 bbls. copperas, ... "
5 do Epsom salts, ... "
1 do bro. sugar, ... "
4 do squills roots, ... "
12 kegs by. soda, ... "
8 do saleratus, ... "
9 bbls. buckles, &c., &c., (military & harness) 1 to 9, ... (P)
1 bbl. assorted hardware, 10, ... "
16 boxes paper, contain'g envelopes, writing papers, &c., marked (H), J, H, D, A, B, K, N, I, L, M, O, C, G, E, F, Y.

Inventory.

The following inventory of the cargo on board the schooner "Reform," Capt. Jno. Bailey:

50 bbls. kerosene oil; 1 box bottles, Tennessee; 4 boxes cont'g 16 large sealed cans; 12 casks sal soda; 20,000 segars; 2 boxes matches (large quantity;) 5 bbls. alum; 1 box gum camphor; 1 bbl. pill 13 boxes; 1 box hooped shirts; 1 bbl. bottles tannin; 1 box shoe-thread; 20 bbls. copperas; 1 box essence, various kinds; half bbl. oil; 100 boxs tin plates; 2 bbls. snuff; 64 bars tin; 12 half and 1 whole chest tea; 1 box skirts, &c.; 36 boxes essence coffee; 11 bbls. whiskey; 1 bag corks; 128 boxes Scotch snuff; 4 boxes tartaric acid; 1 box surgical and cupping instruments; 19 boxes solidified lye; 6 boxes empty vials; 1 box borax; 1 package letter paper; 1 box refined alum; 1 box bottles croton oil; half barrel snuff in bladders; 3 boxes various medi-

cines; 1 cask blue vitriol; 2 boxes wool cards; 155 sacks salt; 1 box copper rivets and burs; 4 bags Rio coffee; 1 box Jamaica ginger; 1 bbl. crushed sugar; 1 box hartshorn in bottles; 5 bbls. Epsom salts; 2 boxes bottles calomel; 1 bbl. bro. sugar; 1 box skirts, shoethread, &c.; 4 bbls. squills root; 2 carboys vitriol; 12 boxes soda; 1 box opium and other medicines; 8 kegs saleratus; 1 box chloroform in bottles; 10 barrels buckles, &c.; 2 kegs litharge; 16 boxes letter and note paper, envelopes, &c.

The following were found in three carpet bags, doubtless intended for the Miss Carys and their brother in Richmond:

1 ps. fine shirting; 6 calico skirts; 25 pr. men's socks; 8 pr. ladies' hose; 2 lawn dress patterns; several under-bodies for ladies; 11 lin. cambric h'dk'fs; 1 pr. under-sleeves; 12 spools cotton; lot of ladies' fine embroidered h'dk'fs; 6 pr. ladies' kid gloves; 2 garibaldis; 1 bottle India ink; 3 white spencers; lot ribbon; 1 silk basque; lot cambric; 2 sun shades; ribbons and lace collars; 4 pr. men's boots; 4 pr.
14 ladies' morocco slippers; 3 pr. lasting gaiters; 3 coats; 2 pr. corsets; 2 lace collars; 1 black silk dress pattern and trimmings; lot black sewing silk; 1 head dress; 2 lawn dress patterns and under-sleeves; 8 pr. pants; 2 robes for boys; 8 silk h'dk'fs; lot of under-sleeves, spencers, &c.; lot of pins; 2 pr. ladies' buckskin gloves; 12 fine linen cambric h'dk'fs; 7 pr. hose; 1 pr. pants; 1 coat; 7 shirts; 9 collars, &c.

Cargo on board the schooner Reform, as far as it can be examined without unloading:

1, 45 boxes tin; 2, 100 sacks salt; 3, 20 barrels sugar; 4, 10 bags coffee; 5, 5 cases, two boxes, 1 case, contents unknown; 6, 12 casks of soda; 7, 11 barrels whiskey; 8, 50 barrels oil; 9, 10 barrels, 5 boxes m'd'se, contents unknown; 10, 2 boxes dry goods; 11, 10 cases, 1 case, contents unknown.

Articles not on manifest.

1, 1 box hoop skirts, (large box ;) 2, 1 large box of segars; 3, 1 bale shoethread; 4,— saddlers' silk; 5, 18 boxes snuff; 6, 7 chests of tea; 7, 2 demijohns brandy; 8, 10 boxes concentrated dye; 9, 12 cases extract of coffee; 10, 3 boxes envelopes; 11. 1 barrel of liquor.
15 Names of men in charge of the cargo: William R. Penniman and William B. Dobbin.

The above list of the cargo of the Reform is as taken in my presence.

STEPHEN CORNELLY,
Capt. U. S. R. C. Jackson.

Letter from Gen'l Dix to Secretary of the Treasury, 17th January, 1862.

HEADQUARTERS. *Baltimore, Jan'y* 17, 1862.

Hon. S. P. Chase, Secretary of the Treasury:

SIR: I enclose a letter from Brig. Gen'l Lockwood on a matter of a good deal of importance; Mr. F. H. Smith, who brought it, will hand

you this, and I solicit for him such facilities as it may be proper to give to accomplish his object. He will present to you some facts in regard to the culture of the cotton plant in the middle States which are of great interest, and are very necessary to be known in attempting its introduction.

I am, very respectfully, your obed't serv't,

JOHN A. DIX,
Maj. Gen'l.

[Copy.]

EASTVILLE, VA., *Jan'y* 13, 1862.

GENERAL: Riding through this country I have observed many attempts to raise cotton here. I herewith forward a sample which will compare favorably with any I have seen south. The bearer,
16 Wm. F. H. Smith, will lay before you a scheme for obtaining seed, which seems to be the only difficulty in the way of introducing this staple here. This scheme seems to be plausible, and I commend it to your favorable consideration. It will involve the writing of letters by yourself, but I believe no expense; that success in this end would go farther than anything else in conciliating this people.

I am here to-day on special business, and return to Accomac county immediately.

Very respectfully, your obedient servant,

(Signed) H. H. LOCKWOOD,
Brig. Gen'l.

To Maj. Gen'l J. A. DIX,
Commanding Dept. of Penn., Baltimore, Md.

TREASURY DEPARTMENT, *Jan'y* 18, 1862.

The officers of customs and officers commanding naval and military forces are requested to respect any pass or request of Maj. Gen'l Dix in behalf of Mr. F. A. Smith, named in the within letters, in connection with the objects therein specified.

S. P. CHASE,
Sec'y of Treasury.

Endorsed: Baltimore, January 17, 1862. Maj. Gen'l John A. Dix enclosed a letter from Gen'l Lockwood in regard to cotton culture in Accomac.

Letter from George Harrington, Assistant Secretary of the Treasury, to Gen'l Dix, 25 Jan'y, 1862.

[Copy.]

17 TREASURY DEPARTMENT,
January 25, 1862.

SIR: You wrote a letter to the Secretary, based, as I understand it, upon a communication to you from General Lockwood, suggesting or recommending that permission be granted to a Mr. Smith to take

salt to the coast of North Carolina, or other points, to exchange for cotton or other productions.

The Secretary endorsed those original papers, the effect of which, it is represented, will be to violate the blockade. Will you advise the Secretary where Mr. Smith is to be found, and if you are enabled to communicate with him, also advise him as early as possible that the permission granted to him is revoked, and therefore to take no further steps under it.

The Secretary further desires to learn if you know from what port Mr. S. proposes to clear his vessel. An early answer is requested.

I am, very respectfully,

GEO. HARRINGTON,
Ass't Secretary of the Treasury.

Maj. Gen'l DIX, *Baltimore.*

Permit.

TREASURY DEPARTMENT, *March* 7, 1862.

With the approbation of the President of the United States, and by virtue of the power conferred upon the Secretary of the Treasury by the act further to provide for the collection of duties on imports, and for other purposes, approved July 13, 1861, authority is hereby given to William L. Hodge, of Washington city, to employ a
18 vessel to carry cotton seed from any point on the waters of Virginia emptying into the Chesapeake bay to the port of Baltimore, provided that the said William L. Hodge shall first execute a bond, with one or more sureties, to be approved by the Solicitor of the Treasury, in the penal sum of twenty thousand dollars, conditioned that the vessel so employed shall not transport to or from Baltimore, or Virginia, any goods, wares, or merchandise, or supplies other than those actually required for the use of the crew thereof for one trip, or convey any person, letter, or information to, or in any way aid or comfort those in rebellion against the government of the United States, and that none but the captain and crew necessary for the navigation of said vessel shall be allowed transportation or passage thereon, except by special order of the military or naval commandant of the forces of the United States in the district so navigated; and provided, further, that this license shall be liable to modification or revocation at any time by the Secretary of the Treasury; and provided, further, that one-half of the cotton seed so obtained shall be furnished to the Secretary of the Interior at the cost thereof.

In testimony whereof, I hereunto set my hand and affix the seal of the Treasury Department this seventh day of March, one thousand eight hundred and sixty-two.

S. P. CHASE,
Secretary of the Treasury.

Answer claim of Jno. Bailey as to the schooner.

District court of the United States, district of Maryland.—In admiralty.

19 To the honorable William F. Giles, judge of the district court of the United States for the district of Maryland:

The answer and claim of John Bailey, owner and claimant of the schooner Reform, to the libel of the United States against said schooner.

And now comes the said John Bailey, owner and claimant of the said schooner, and for answer to the libel of the said United States gainst the said schooner doth allege and propound as follows:

First. That he, the said John Bailey, is the true and bona fide owner of the said schooner, and that no other person is the owner thereof.

Second. That he admits the matters propounded in the first, second, third, fourth, and sixth articles to be true, and the matter propounded in the fifth and seventh articles in said libel to be true, with the explanation hereinafter contained, and contained in the answer of Nicholas G. Penniman, the owner and claimant of the cargo on board the said schooner at the time of her seizure, filed in this court.

Third. And the said respondent, further answering, says that the said schooner Reform was bound on a lawful voyage at the time of her seizure, as set out in the said libel of the United States, and as such was not liable to seizure and detention—not to forfeiture as therein alleged; and for the facts and circumstances attending said voyage, this respondent prays leave to refer to and make a part hereof the answer of Nicholas G. Penniman to the libel filed in this

20 court by the United States against the vessel and cargo of the said schooner Reform.

Wherefore this respondent and claimant prays that the said schooner Reform may be restored to him in the like plight and condition as at the time of the seizure and detention thereof by the said John F. McJilton, and that he may be hence dismissed, with his costs and charges in this behalf sustained, together with damages to be paid him by the said John F. McJilton for the unlawful seizure and detention aforesaid on this 19th day of May, 1862.

GEO. W. DOBBIN,
Proctor for Respondent.

Appeared, personally, John Baley, the above-named claimant and respondent, and was sworn to the truth of the foregoing claim and answer before me.

JOHN HANAN, *U. S Commissioner.*

Answer and claim of N. G. Penniman as to the cargo.

District court of the United States, district of Maryland.—In admiralty.

To the honorable William F. Giles, judge of the district court of the United States for the district of Maryland:

The answer and claim of Nicholas G. Penniman, owner and claimant of the cargo of the schooner "Reform," to the libel of the United States against said cargo.

And now comes the said Nicholas G. Penniman, owner and claimant of the said cargo, and for answer to the libel of the said United States against the said cargo doth allege and propound as follows, viz:

21 First. That the said Nicholas G. Penniman is the true and bona fide owner of the said cargo, and that no other person is the owner thereof.

Second. That he admits that the matter propounded in the first, second, third, and fourth articles.

Third. That he admits that commercial intercourse not specially authorized by the government of the United States between the States so declared to be in rebellion and the rest of the United States was unlawful, and the goods, wares, and merchandise coming from said States or section, or proceeding to the same, without the special authority of the government of the United States, became forfeited to the United States, *became forfeited to the United States*, but this respondent and claimant alleges and propounds that the said cargo on board the said schooner "Reform" was not liable to the said forfeiture, because the same was proceeding on a lawful voyage by the express authority of the government of the United States; and this respondent now states to this honorable court the facts and circumstances attending the said proposed voyage, and the acts and doings of the government of the United States in relation thereto, in order that the lawfulness of said voyage, and the authority of the government for undertaking the same, may fully appear.

In the month of January last Francis H. Smith, a citizen of Baltimore, applied to the government of the United States, in the person of the honorable Salmon P. Chase, Secretary of the Treasury of the United States, for permission to take cargo of goods unto that

22 part of Virginia or North Carolina where cotton was grown, in order to sell the same, and with the proceeds thereof procure a return cargo of cotton seed for planting in the States not so declared to be in rebellion at that time. At that time no part of the State of Virginia was in the occupation of the forces of the United States, except the eastern shore of Virginia and that part of Virginia west of the Alleghany mountains, where cotton has never been grown as a crop, nor any part of North Carolina, except a landing on the shores of Albemarle sound. After a full conference with the said Secretary, and an explanation of the feasibility of the project, if conducted secretly and discreetly, and the earnest expression by the said Secretary of his opinion of the desirableness of the object to the United States, the permission was granted to the said Smith, and the said Secretary issued an instruction, or order, directed to Gen'l John A. Dix, in military command in Baltimore, to see that the vessel and cargo of the said Smith should be cleared at the custom house, and the said Smith furnished with a pass to allow him to take said vessel and cargo to any port in Virginia or North Carolina, which pass General Dix issued and delivered to the said Smith, and said he would, at the proper time, perform the other part of the said Secretary's instructions, as to the clearance of the said vessel at the custom-house. Before obtaining the said pass, it had been agreed between the said Smith and this respondent that if the said Smith

could procure such permission and pass, this respondent would
23 furnish the cargo required, and would participate in the profits of said enterprise. During the preparation of this voyage several conferences were had by this respondent with General Dix, and the necessity of keeping the voyage and its objects from public notoriety was stated to and recognized by him, and it was understood and agreed that the clearance at the custom-house was to be made without disclosing upon the face of the papers any fact which would reveal the true nature of the voyage. When the preparation for the voyage was nearly completed, it became necessary to see the collector of the port to arrange finally for the clearance of the vessel and cargo, and upon going to the said collector this respondent was told by him that he, this respondent, must see General Dix again, as he, the collector, had had notice that the voyage would not be allowed, and that the pass was revoked.

This respondent thereupon went with said Smith to see General Dix, when they were told by him they must surrender the said pass to him, the said General Dix, and he advised them to go to Washington in person, and see the Secretary of the Treasury upon the subject. This respondent and the said Smith did accordingly surrender said pass to said General Dix, who now has the same, or has sent it to the said Secretary of the Treasury, and which, when produced by them at the trial of this cause, will show the extent and terms of the authority granted by it. This respondent and the said Smith then visited Washington, and saw the said Secretary of the Treasury, and were told by him that the said permission and pass had been
24 revoked, because an unnecessary and hurtful degree of publicity had been given to the same, and for no other reason, and that it such had not been the case the said pass would not have been revoked. From these facts and circumstances this respondent learned—

First. That, for the purpose of procuring cotton seed, the government was willing that a cargo of goods should be taken into Virginia or North Carolina, then in rebellion and unoccupied by the forces of the United States, and with the proceeds thereof a cargo of cotton seed should be purchased and brought into the States, *and with the proceeds thereof a cargo of cotton seed should be purchased and brought into the States* not in rebellion, and did actually grant full authority and permission therefor.

Secondly. That in the prosecution of said enterprise caution and secrecy were to be observed, and that the government would rather abandon the benefit of the enterprize than succeed in it at the expense of its being publicly known.

After these events had transpired, the Congress of the United States, apparently impressed with the importance of procuring cotton seed, passed an act for that purpose, in the following words:

An act making an appropriation for the purchase of cotton and tobacco seed for general distribution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be,

25 and is hereby, appropriated, out of any money in the treasury not otherwise appropriated, the sum of three thousand dollars for the purchase of cotton seed, and one thousand dollars for the purchase of tobacco seed, under the superintendence of the Secretary of the Interior, for general distribution, provided that the said cotton seed shall be purchased from places where cotton is grown as far north as practicable.—Approved Feb'y 13, 1862.

This respondent respectfully calls the court's attention to the fact, that at the time of the passage of this act no part whatever of the cotton-growing country was occupied by the forces of the United States, and by the express terms of the act the cotton seed was to be purchased from places where cotton is grown as far north as practicable; and this respondent respectfully submits that this could only refer to the purchase in Virginia, then in rebellion, that being the most northerly place where cotton is grown. Under this authority, so conferred on him, the Secretary of the Interior, the honorable Caleb B. Smith, appointed William L. Hodge, esq., of Washington city, to procure said cotton seed in Virginia, and issued to him the following letter of appointment and authority, viz:

DEPARTMENT OF THE INTERIOR,
March 8, 1862.

SIR: Congress having authorized this department to procure cotton seed for planting in the loyal States, I hereby authorize and appoint you to procure a cargo of the same in Virginia, and bring it to Baltimore, this department to have the privilege to take such portion of said cargo as it may require, (not exceeding one-half,) at the actual cost and charges.

26 This letter will be your authority to procure said seed, and all parties in employ of the United States are respectfully requested to allow you to pass freely for said purpose.

In am, respectfully, your ob'd't ser't,

CALEB B. SMITH,
Secretary.

WILLIAM L. HODGE, Esq.,
Washington City, D. C.

Upon this appointment being made, the said William L. Hodge, having learned that this respondent had been already engaged in the former enterprize, which had been frustrated by the publicity which had been given to it, engaged this respondent to supply the cargo, and to execute the said authority, upon the condition of receiving a portion of the profit expected to be derived therefrom, and this respondent now respectfully submits that it is apparent, upon the face of said letter, that the said Secretary of the Interior contemplated the fact that the said William L. Hodge, or those whom he might employ under him, were to be compensated for the labor and capital to be employed in the undertaking by the profits to be made, either or both, from the cargo to be taken in, or the cotton seed to be brought out, because he does not stipulate to pay to the said agent any compensation for said labor and capital, and does not combine himself

to take any part of said cotton seed when bought; and this respondent
respectfully submits, that in this view of the undertaking, he
27 was at liberty, and was expected, to make as his compensation
whatever profit could be legitimately made by taking a cargo in
and bringing another out; and this respondent also respectfully submits,
that the authority to go to Virginia and procure a cargo of cotton
seed necessarily implied the authority to take the means of procuring
the same, and as the establishment of a paper currency having the
quality of a legal tender has caused gold and silver to be articles of
commerce, and as there is no other currency common to the States
not in rebellion and then in rebellion, it became a necessity to take
something which could be advantageously exchanged for cotton seed,
and this respondent selected said articles as he supposed would best
effect the object of obtaining such seed; and he also submits that if
the sending of such a mission into Virginia by the Secretary of the
Interior under the authority of Congress was a lawful act, it is diffi-
cult to conceive how the said enterprize should become unlawful, and
the goods intended to be used therein become forfeited, because of a
difference of opinion as to the details of the execution of such mission
between the officers of the customs and the messenger of the govern-
ment. The most that could be be done could be to reform such mis-
sion according to what might be determined to be its true object and
scope, and not to impose a forfeiture for a mistake construction of a
lawful act.

And this respondent further states, that being thus empowered to
procure said cotton seed, and thus admonished that the same
28 should *should* be done quietly and without publicity, he pro-
ceeded to Virginia with a small vessel and some goods to exe-
cute said mission, not disclosing his said purpose to any officer of the
customs or government, (except to General Dix, who was fully in-
formed thereof,) and cleared for a port on the eastern shore of Vir-
ginia; that on reaching Fredericksburg he found that though the
cotton seed could have been had in the interior, no transportation for
the same to his vessel could be procured, as the said roads were then
fully occupied in the transportation of troops, and he was in great ap-
prehension lest his vessel should be seized for warlike purposes, or a
stone blockade, then threatened in the Rappahannock, be put in exe-
cution; he, therefore, was obliged to return precipitately with his
vessel empty, except bringing a small quantity of tobacco, and leav-
ing the remainder of the goods he had taken with him undisposed of
in Fredericksburg. On his arrival in Baltimore he called promptly
on General Dix and reported what he had done, who told him to land
the tobacco, and if any impediment was interposed, or trouble given
him, to come to him and he would remove it, but this respondent had
no occasion to call on him. While in Virginia this respondent learned
that cotton seed could be had in the neighborhood of Urbanna, near
the mouth of the Rappahannock, to which place the voyage now in-
terrupted was destined.

And this respondent, further answering, says that after the
29 event just recorded, the condition of things, in a military point

of view, in the said neighborhood became greatly changed by the further extended military occupation of the forces of the United States, and the said William L. Hodge, being desirous that the said intended voyage should experience no interruption therefrom, applied to the Secretary of the Navy of the United States for authority to pass the vessel of the United States blockading the waters of Virginia, and received from him the following endorsement, in the said letter of the Secretary of the Interior:

NAVY DEPARTMENT,
April 25, 1862.

Naval officers in command of ships-of-war will respect the enclosed, and will afford protection in waters under their control and jurisdiction inside the capes of Chesapeake bay.

G. WELLS.

And this respondent, further answering, says that the said William L. Hodge, being anxiously solicited—is that the said voyage, whilst it should accomplish the purpose designed by the government, and the incidental profit to himself and this respondent to be derived therefrom, should for greater certainty be kept within limits unquestionably legal and free from objection—addressed to this respondent from Washington, under date and postmark of April 26, 1862, the following letter of instruction for the government of said voyage:

WASHINGTON, 26 *April*, 1862.

30 DEAR SIR: I enclose the letter of authority from Sec'y Smith on the subject of my arrangement with him to supply cotton seed under the recent act of Congress, and an endorsement on it from the Sec'y of the Navy for the naval officers commanding in waters of the Chesapeake. In carrying out that arrangement under the agreement between you and I, you will, of course, strictly conform to the limits assigned by Sec'y Wells, to the waters under federal jurisdiction, which will allow you to enter several of the Virginia rivers, including the Rappahannock, almost for its whole length, a part of *quit* Run, and probably more of the latter by the time you reach there. You will carefully avoid all intercourse either *with* rebels or rebeldom; allow no letters or newspapers in the vessel, nor other persons except those necessary for the navigation of the vessel. And should you unfortunately, by any untoward and unexpected event, come in contact with rebels, or be seized by them, you will avoid in every way from giving them any aid or comfort, or information, by or through any person or persons who may be connected with the vessel. On this point I cannot urge you too strictly, and of course you will be cautious as to the parties that may go in the vessel as her officers and crew. Of course you will take special care in the selection of the seed; see that it is all fresh and perfect; of the right kind; and all of the last crop; free from damage; and in good condition. I would

recommend that it be compressed so as to bring a larger quantity. Wishing you a successful trip,

I am, very truly,

W. L. HODGE.

W. G. PENNIMAN, Esq., *Baltimore.*

31 Directed on outside:

W. G. Penniman, Esq.,
Penniman Brother,
Hanover st., Baltimore.

Postmarked Washington, April 26, 1862.

And this respondent, further answering, says that the said vessel, the Reform, being loaded with an assorted cargo, and ready to depart on her said voyage, within the authority conferred by the said Secretary of the Interior, and the instruction of the said William L. Hodge, cleared for the port of Alexandria, but, in fact, intending to go to the river Rappahannock, the whole of which was then in possession of the federal forces, and there to obtain the cargo of cotton seed which the government was so desirous to procure. And this respondent further says, that, admonished by the experience of the first abortive expedition, rendered so by the publicity given to it, and by the strong wish of the Secretary of the Treasury then expressed, every effort was made to keep the said expedition and its objects free from all observations, and Secretary, though communication was maintained with General Dix upon the subject, and assurances received from him that if any impediment occurred he would remove it; accordingly the vessel was cleared for the port of Alexandria, and the manifest was made out, as it was understood in the former expedition it should be, without reference to its conformity of an

32 ordinary trading voyage to the port of Alexandria.

And this respondent states that, except for the purpose of the secrecy desired by the government, there existed no reason whatever for giving the voyage a pretended destination, and making the papers to conform to such pretended voyage, since no duties are payable on said cargo, and no permit required either to trade or land the same; and but for the purpose aforesaid, it could as well have been manifested in one way or another.

And this respondent, further answering, says that when the said vessel, the Reform, was cleared and *and* was about to proceed on her said voyage, she was stopped at the revenue cutter stationed in the harbor of Baltimore, and her papers demanded, which being produced, together with the authority and pass of the Secretary of the Interior, and the endorsed pass of the Secretary of the Navy, were all taken from the said vessel, and she was taken and detained by order of John S. McJilton, in the custody of the said revenue officers, and afterwards transferred to the custody of the United States marshal of this district upon the false pretext that the said vessel and cargo was forfeited to the United States because of an alleged purpose to violate the laws of the United States, whereas this respondent maintains

and avers that the said voyage was a lawful one, originated and to be performed under the authority and permission of the government of the United States, and that the arrest and detention of the said vessel and cargo was the violation of the pass and safeguard of the proper authorities of the United States, and of the rights of this
33 respondent and of the owner of the said vessel.

Fourth. And this respondent admits to be true the matter propounded in the sixth article of said libel.

Fifth. And he also admits to be true the matter propounded in the seventh article of said libel, with the explanation contained in his answer to the third article thereof.

Wherefore, this respondent and claimant prays that the said cargo may be restored to *to* him in the like plight and condition as at the time of the seizure and detention thereof by the said John F. McJilton, and that he may be hence dismissed with his cost and charges in this behalf sustained, together with damages to be paid him by the said John F. McJilton for the unlawful seizure and detention aforesaid.

GEORGE W. DOBBIN,
Proctor for Respondent.

On this 19th day of May, 1862, appeared personally Nicholas G. Penniman, the above-named claimant and defendant, and was sworn to the truth of the foregoing claim and answer, before me.

JOHN HANAN, *U. S. Com'r.*

Decree.

In the district court of the United States, district of Maryland.

THE UNITED STATES
vs.
THE SCHOONER REFORM AND CARGO.

This cause standing ready for hearing, and the proceedings having been heard and considered, and the evidence heard, it is, on this second day of June, 1862, by me, William F. Giles, judge of the district court of the United States for the district of Maryland, and by the authority of said court, adjudged, ordered, and decreed,
34 that the said schooner and cargo, respectively, be, and the same are hereby, discharged, and the libel in this case is hereby dismissed, each party to pay its own costs.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the claimants and owners of the said schooner Reform and cargo, by their proctor, have prayed an appeal to the circuit of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November next, and to them it is granted. Thereupon it is ordered by the court here, that the record and proceedings aforesaid, together with all things relating to the

same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the seal of the said district court, this second day of June, in the year of our Lord one thousand eight hundred and sixty-two.

THOS. SPICER, *Cl'k Dist. C'rt.*

And now here, at this day, to wit, the 26th day of May, in the year of our Lord one thousand eight hundred and sixty-three, the court here made and passed the following decree, to wit:

In the circuit court of the United States in and for the district of Maryland.

THE UNITED STATES, appellant.
vs.
THE SCHOONER REFORM AND CARGO, appellee.

35 An appeal from the district court for the district of Maryland.

This cause standing ready for hearing, and the record having been read and considered, and the arguments of counsel heard, it is on this twenty-sixth day of May, eighteen hundred and sixty-three, adjudged, ordered, and decreed, that the decree of the said district court be, and the same is hereby, affirmed.

R. B. TANEY.

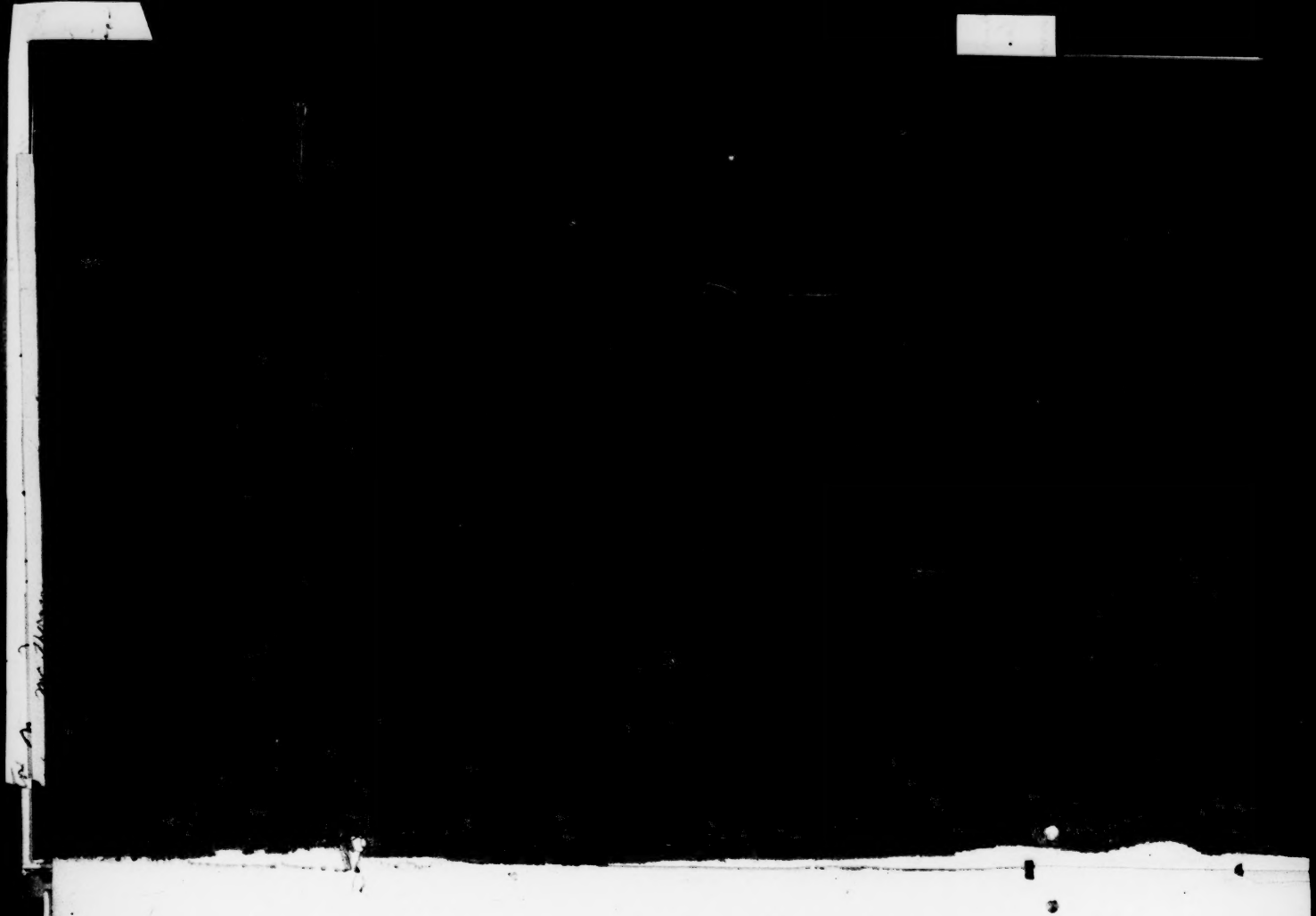
From which said decree, so as aforesaid passed, the said United States of America, by their attorney aforesaid, prayed an appeal to the Supreme Court of the United States, to be held at the city of Baltimore, on the first Monday in December next, and to them it is granted. Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things concerning the same, be transferred to the said Supreme Court, and the same are transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.]

THO. SPICER, *Clerk.*

Filed 10th December, 1863.



Dobbin says these papers proved on the trial below.

DEPARTMENT OF THE INTERIOR,
May 28, 1862.

The authority issued by me on the 8th March, 1862, to William L. Hodge, to procure cotton seed, was issued without reference to any application for a like authority to any other department. It was intended to be complete in itself, and to include all the means necessary for the attainment of that object.

CALEB B. SMITH,
Secretary.

HEADQUARTERS,
BALTIMORE, *May* 24, 1862.

The paper authorizing Mr. Hodge to go to the South to get a cargo of cotton seed was communicated to me by Mr. Hodge himself, and I supposed that the voyage would be quietly made, so as to attract as little public notice as possible.

JOHN A. DIX,
Major General.

In the Supreme Court U. S. *in re* Schooner Reform and Cargo.

The foregoing letters having been accidentally omitted from the record, are now admitted by agreement.

January 18, 1866.

GEORGE W. DOBBIN,
Attorney for Appellees.

Attys Gen Consent in Sup Court

THE UNITED STATES, APPELLANTS,

vs.

THE SCHOONER "REFORM,"

JOHN BAILEY, CLAIMANT,

AND

NICHOLAS G. PENNIMAN, CLAIMANT OF THE CARGO.

In the Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

The claimants, owners of the said Schooner "Reform and cargo," by Wm. Price and N. J. Thayer, their attorneys, respectfully move the Court to dismiss the Appeal and the prosecution in this case, upon the ground that there is now no law or act of Congress in force authorizing the forfeiture of the said vessel and cargo for the causes alleged in said libel.

In support of this motion the said owners will contend: That the act of July 13th, 1861, ch. 3, sec. 5, and the supplementary act of May 20th, 1862, ch. 81, provides that upon the President's issuing a proclamation declaring the States and sections of country in insurrection, commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease, and be unlawful *so long as such condition of hostility shall continue.* The President issued his proclamation of August 16th, 1861, (as also several others,) declaring the States and sections of country in insurrection against the United States, and declaring that all commercial intercourse between the same and

the inhabitants thereof and the citizens of the rest of the United States would be unlawful, and remain unlawful until such insurrection should cease or have been suppressed.

Thus, both the acts of Congress and the President's proclamation, limit the duration of the restrictions upon commercial intercourse to the continuance and existence of actual hostility against the Government of the United States, or the period when the insurrection should cease or be suppressed.

That the insurrection or rebellion has terminoted or been suppressed is a historical fact, of which the Court will take judicial notice, and which the President, by his several proclamations of the 22d of May, 1865, of the 29th of May, 1865, of the 13th of June, 1865, of the 24th of June, 1865, has recognized, and removed all restrictions theretofore existing upon internal and coastwise intercourse and trade with the late insurrectionary districts or States and parts thereof.

The case is then complete and the question is, "What is the law?"

A statnte, penal and temporary by its terms, cannot be enforced after its expiration or repeal for acts done while it was in force.—1st Kent's Com., 465; Miller's case, 1st Wm. Black., 451; Marshal C. J. in Yeaton vs. The United States, 5th Cranch, 281; The "Irresistible," 7 Wheat, 551; The U. States vs. Passamore, 4 Dall, 372; The U. States vs. Preston, 3 Peters, 57; The U. States vs. Cole, 2d McCord, 1; Annan, 1 Wash. C. C. Rep., 84; Hale vs. J——- Bank, 1 Stewart's Alabama Rep., 347; Pope vs. Lewis, 4 Alabama Rep. N. S., 487; Commonwealth vs. Marshall, 11 Pick. Rep., 350; Allen vs. Farrow, 2 Bailey's S. C. Rep., 584; Keller vs. The State, 12 Md. Rep. 322; The U. States vs. The Schooner Peggy, 1 Cranch, 103; The U. S. vs. The Ship Helen, 6 Cranch, 203.

The prosecution in this case was instituted under the 5th section of the July act, 1861, before referred to, and a condemnation had upon the ground that the said Schooner and cargo, at the time of their seizure, were *proceeding* to the States in rebellion against the provisions of that act. But the prosecution is still pending on appeal and no final adjudication has yet been reached. And what is there to except

this case from the rule which is applied in similar cases; that the prosecution is *still pending* and is in the same category, until *finally adjudicated* as a prosecution commenced after the statute ceases to be operative.

The case of Yeaton vs. the United States, 5th Cranch, 281, is, in its general features, much like the present. It was an appeal from the Circuit Court of Maryland, which had condemned the Schooner "General Pinkney and cargo" for a breach of the act of Congress prohibiting commercial intercourse with certain parts of the Island of St. Domingo, passed February 28, 1806. The act was limited in duration to one year, but by an act of 1807 was continued until *the end of the next session of Congress*, when it expired. The case was pending on appeal when the act expired, and the Court say that in Admiralty cases, an appeal suspends the sentence altogether, and that it is not *res adjudicata* until the final sentence of the Court is pronounced. That the case in the Appellate Court is to be heard *de novo* as if no sentence had been pronounced. The Court say further that if no sentence had been pronounced, it has long since been settled upon general principles that after the *expiration or repeal* of the law no penalty can be enforced for violations of the law committed while it was in force.

Can any reason be imagined why the "General Pinkney and cargo" should be released and that the "Reform and cargo" should not be released?

In the case of the United States vs. Preston, 3c. Peters, 66, the Court say, that in Admiralty cases, a decree is not final while it is depending there, &c.

The act of the 13th of July, 1861, and its supplement, as also the act of August 6, 1861, required the issuing of the President's proclamation to give them vitality, or to render them effective; and if it required an additional proclamation to put an end to these acts, the proclamations before referred to have been issued by the President.

WM. PRICE,
N. J. THAYER,
Counsel for Claimants and Owners.

Supreme Court of the United States.

No. 102.

THE UNITED STATES, APPELLANTS,

vs.

THE SCHOONER REFORM, JOHN BAILEY, CLAIMANT,

AND

NICHOLAS G. PENNIMAN, CLAIMANT OF THE CARGO.

APPELLEES' BRIEF.

THIS is an appeal from the Circuit Court of the United States for the District of Maryland. The facts are these:

By an act of Congress, approved February 13, 1862, the sum of three thousand dollars was appropriated for the purchase of cotton seed, under the superintendence of the Secretary of the Interior, for general distribution, the cotton seed to be purchased from places where cotton seed is grown as far north as practicable. (See the act at large, on pages 14 and 15 of the Record.) Under this authority, the Secretary of the Interior authorized William L. Hodge to procure a cargo of cotton seed in Virginia, that being the most northerly place where cotton seed is grown, and requested all persons in the employ of the United States to allow him to pass freely for that purpose. (See the Secretary's letter, on page 15 of the Record.)

Upon the letter of the Secretary of the Interior conferring this authority, the Secretary of the Navy endorsed an order to all naval officers in command of ships of war, to respect the pass, and to afford protection to the voyage authorized by it.

(See Record, page 17.) To accomplish this object of procuring the cotton seed, a small vessel of fifty-seven tons burthen, the schooner "Reform," was provided, and a cargo put on board of her, and she was cleared for Alexandria, it being understood by the agents entrusted with the execution of the enterprise, that the matter was to be conducted in such way as to attract no public attention. (See letter of General Dix, omitted from the Record, but supplied by agreement.)

When the vessel was about to proceed on her voyage she was seized as being forfeited for "proceeding with her cargo to that part of the State of Virginia lying west of the Chesapeake, and being in insurrection against the United States, and so proclaimed to be by the President of the United States, whereby, and by force of the statutes in such case made and provided, the said schooner Reform and cargo have become and are forfeited to the United States," &c.

Upon the trial of the cause the District Court dismissed the libel and discharged the vessel and cargo, whereupon the United States appealed to the Circuit Court, upon which appeal the decree of the District Court was affirmed, and the United States took the present appeal.

The decree of condemnation sought to be obtained by the United States in the Courts below, and still insisted upon in this appeal, is for an alleged violation of the Act of Congress of 13 July, 1861, and the President's Proclamation thereby authorized, in virtue of which all commercial intercourse with the States in rebellion, became unlawful so long as a condition of hostility continued. Since this case has been pending, the insurrection has been suppressed, and the President, by formal Proclamation, has removed all restrictions upon trade with the States lately in rebellion, so that if the act for which the condemnation is asked, were to be done now, it would be perfectly lawful.

Under these circumstances the Appellees contend:

I. That commercial intercourse with the States formerly in insurrection being no longer unlawful, and there being no reservation in any Act of Congress, nor in any Proclamation of the President, whereby a liability for former violations of the law is continued and preserved, no condemnation of this vessel and cargo can now take place. (For a more detailed reference to the

Proclamations of the President, and the authorities in support of this proposition, the Appellees refer to their motion to dismiss this appeal heretofore filed in this cause.)

II. That by the true construction of the Act of Congress authorizing the Secretary of the Interior to purchase cotton seed, and requiring him to purchase it from places where cotton is grown as far North as practicable, the Secretary was authorized to send to Virginia for the same, that being in fact the only place which answered the designation in the act.

III. That the Act of Congress conferred upon the Secretary of the Interior, the duty of performing a judicial act, (and he having performed that act, (whether this Court may think he interpreted the Act of Congress rightly or not,) the citizen who confided in that interpretation, and put his property at risk in accordance with it, is not liable to have it confiscated, especially in a case where the wrong was arrested, and never was consummated.

WILLIAM PRICE,
W. J. THAYER,
GEORGE W. DOBBIN,
For Appellees.

Murphy & Co. Printers, Balt.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

THE UNITED STATES, appellants,
vs.
THE SCHOONER REFORM AND CARGO. } No. 102.

APPEAL FROM THE DECREE OF THE CIRCUIT COURT FOR THE DISTRICT OF MARYLAND.

BRIEF FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

THE UNITED STATES, appellants,
vs.
THE SCHOONER REFORM AND CARGO. } No. 102.

THE CASE.

This is an appeal by the United States from the decree of the circuit court of the United States for the district of Maryland, affirming the decree of the district court, dismissing the libel in the above cause.

The libel, filed by the United States attorney on May 8, 1862, alleged that the schooner "*Reform*," at the date of her seizure, May 7, 1862, was proceeding from the port of Baltimore with her cargo to that part of the State of Virginia declared, by proclamation of the President, and being, in insurrection against the United States, and prayed that the vessel and cargo be, for that cause, condemned as forfeited to the United States by virtue of the 5th section of the act of July 13, 1861. (12 Stat. at Large, 237.)

JOHN BAILEY interposed a claim for the vessel, and NICHOLAS G. PENNIMAN presented a claim for the cargo. The claimants filed an answer to the libel of

the United States, admitting that, at the time of the seizure, the vessel and cargo were proceeding on the voyage alleged in the libel. They respectively denied, however, that the voyage, under the facts set forth in their answer, was an unlawful one, and also that either the vessel or cargo was liable to forfeiture.

The cause seems to have been heard by the district and circuit courts mainly upon the libel, and the answer of the claimants. No oral testimony appears by the record to have been taken in the case by either party, and but little documentary evidence introduced.

The district court released the vessel and cargo, and dismissed the libel. This decree was affirmed by the circuit court; whereupon the United States appealed to this court. (Record, pp. 19, 20.)

THE FACTS APPEARING FROM THE ANSWER AND PROOFS.

This vessel, the schooner "*Reform*," Bailey, master and owner, cleared on May 3, 1862, at the Baltimore custom-house, for Alexandria, Virginia. (Rec., p. 7.) The manifest, to which was appended an affidavit of the master that it contained a true account of all the articles of the cargo, described the cargo as shipped at Baltimore and consigned to various parties in Alexandria and Washington. (Rec., p. 6.) After the seizure the contents of the cargo were examined, and numerous articles, not mentioned in the manifest, were disclosed. Many of these were articles then of peculiar value in the market of a rebel State. (Rec., p. 9.)

The answer of the claimants admits that the clearance at Baltimore was *simulated*. The vessel was not bound to *Alexandria*, nor was any part of the cargo shipped for, or intended to be landed at, that port, but both vessel and cargo were in fact bound for some point (Urbanna, as stated) on the river *Rappahannock*.

(Rec., p. 18.) The vessel was seized, as she was proceeding out of the harbor of Baltimore, by a revenue cutter, and brought back to her moorings. It is a conceded fact in the case, therefore, that the vessel was conveying wares and merchandise proceeding from a loyal State to that part of the State of Virginia with which commercial intercourse, by the terms of the act of July 13, 1861, was prohibited. (12 Stat. at Large, 257.) The cargo, and the vessel conveying it, must thus be forfeited, unless the allegation of the claimants, that they were proceeding on a lawful voyage, by the express authority of the government of the United States, is established by the facts set forth in the answer.

The defence of the claimants rests upon a very narrow point. They might have presented it in a very few words; but they have chosen to go behind the facts of the voyage in question. We will follow, therefore, the course of their narrative.

A month before the passage of the act of February 13, 1862, appropriating a sum of money for the purchase of cotton-seed for general distribution, Penniman, the claimant, agreed with one F. A. Smith that if he (Smith) obtained authority from the government to take a cargo of goods into Virginia or North Carolina, and to there sell the same, in order that cotton-seed might be bought with the proceeds of such sale, he (Penniman) would furnish the required cargo. (Record, p. 13.) Smith repaired to Washington, and, armed with a letter of introduction from Major General Dix to the Secretary of the Treasury, obtained from that officer this indorsement upon his papers :

"TREASURY DEPARTMENT,
"*January* 18, 1862.

"*The officers of customs and officers commanding naval and military forces are requested to respect any pass or request of Major General Dix in behalf of Mr. F. A. Smith, named in the within letters, in connexion with the objects therein specified.*

"*S. P. CHASE,*
"*Secretary of the Treasury.*"

General Dix, under this authority, issued a pass to Smith, allowing him to take a vessel and cargo to any port in Virginia or North Carolina, and preparations for the voyage were begun by Penniman, under the agreement with Smith before stated. (Record, pp. 10, 13, 14.) Before they were quite completed, however, the Secretary of the Treasury, fearing that the effect of the above indorsement would be to authorize a violation of the blockade, directed the authority given to General Dix in connexion with the plans of Smith and Penniman to be revoked, and it was accordingly recalled. (Record, p. 10.)

The result was that General Dix compelled Smith to return the pass which he had received, and thus the first voyage of the series, ostensibly in search of cotton-seed, was broken up. (Record, p. 14.) Mr. Smith retires from the scene. Penniman, however, remains till the end of the drama.

In February, (13th,) 1862, Congress passed an act in these words :

"*Be it enacted, &c., That there be, and is hereby, appropriated, out of any money in the treasury not otherwise appropriated, the sum of three thousand dollars for the purchase of cotton-seed, and one thousand dollars for the purchase of tobacco-seed, under the superintendence of the Secretary of the Interior, for general distribution, provided that the said cotton-seed shall be purchased from places where cotton is grown as far north as practicable.*" (12 Stat. at Large 338.

The first movement towards bringing this Act into play was made by Mr. William L. Hodge, of Washington. This gentleman, early in March, 1862, seems to have seen the Secretary of the Treasury and applied to *him* for a license, under the act of July 13, 1861, to bring cotton-seed from Virginia to Baltimore. The record shows (p. 11) that such a license was actually drawn up and signed by the Secretary of the Treasury. Its terms deserve attention. The Secretary was willing to grant the license, but only on condition that the licensee (Hodge) would execute a bond in $20,000, conditioned that *the vessel employed should not transport to or from Baltimore or Virginia any goods or supplies other than those required for the crew for one trip, or in any way aid or comfort rebels; and further, that one-half of the cotton-seed to be obtained should be furnished to the Interior Department at cost.*

The Secretary was, probably, moved to this caution by the recollection of the recently arrested transaction, in which *Smith* had been concerned.

Hodge, it would be seen, did not accept this license. The reason is manifest. The conditions imposed were too hard. The bond in twenty thousand dollars was not to be thought of. Its execution would have frustrated the primary object of the enterprise.

Application was then made to the Department of the Interior for authority to trade with the south. On the 8th of March (the proposed license of the Secretary of the Treasury being dated the 7th) Mr. Hodge obtained from the head of that department a letter authorizing him "*to procure a cargo of cotton-seed in Virginia and bring it to Baltimore.*" (Record, p. 15.) Nothing was said in this letter about transporting merchandise to Virginia or selling it there; but Mr. Hodge, supposing, as it is stated, that the letter authorized the taking of a cargo of goods into that

State for the purpose of sale, engaged the present claimant, Penniman, "*to supply the cargo for such a voyage and to execute the said authority, upon the condition of receiving a portion of the profits expected to be derived therefrom.*" (Record, p. 15.) Thus Mr. Penniman appears for the second time in the character of a trader with the enemy's country.

He at once, on the receipt by Mr. Hodge of the above-mentioned authority, proceeded to fit out a schooner, the "*Joe Hunter*," and to load her with a cargo of assorted merchandise for Fredericksburg, Virginia. (Record, p. 5.) Instead of clearing for that place, she took out a falsified clearance for a port on the Eastern Shore of Virginia.

On her arrival at Fredericksburg the cargo was sold to the rebels, but no cotton-seed was found; and in its stead a cargo of tobacco was taken on board, which was brought back to Baltimore and sold by the claimant. (Record, p. 16.) The claimant realized the profits of the outward and return voyages, but the government secured no "*cotton-seed for general distribution.*"

No communication was had, it seems, with the Secretary of the Interior informing him of the result of this professed attempt to get the seed and asking authority to renew the effort. But the claimant immediately set about the preparations for another voyage. This time the present schooner, the "*Reform*," was fitted out. A cargo similar to the first was put on board of her, containing many things not mentioned on the manifest. (Record, p. 9.) The manifest was sworn to by the master as a true statement of the contents of the cargo. A clearance was obtained for *Alexandria*, and on the 3d of May the "*Reform*" sailed on a destination to *Urbanna*, near the mouth of the Rappahannock. She was arrested,

as has been seen, before she got out of the harbor of Baltimore.

But two other facts need be mentioned. Before the "*Reform*" sailed Mr. Hodge applied to the Navy Department for protection to that vessel from officers in command of men-of-war controlling the Chesapeake bay. Upon the letter of the Secretary of the Interior was indorsed by the Secretary of the Navy an order to naval officers to respect that letter, and to afford "*protection in waters under their control and jurisdiction inside the capes of Chesapeake bay.*" (Record, p. 17.) The letter, with this endorsement, was returned by Mr. Hodge to Penniman, to whom Mr. H. thus wrote: "*In carrying out the arrangement between you and I, you will, of course, strictly conform to the limits assigned by Secretary Welles to the waters under federal jurisdiction, which will allow you to enter several of the Virginia rivers, including the Rappahannock,*" &c. (Record, p. 17.)

Neither the letter of the Secretary of the Interior, nor the above indorsement of the Secretary of the Navy, was thought sufficient warrant, as has been seen, for an application to the collector of Baltimore for a clearance to the Rappahannock. On both occasions the parties deemed it wise to resort to false clearances and false papers to elude the officers of the custom-house.

On these facts the questions now before the court arise.

POINTS.

The counsel for the United States contend that the circuit court should have dismissed the claims, and condemned the vessel and cargo as forfeited to the United States, and that the decree of that court must now be reversed on these several grounds:

I. That the authority of the Secretary of the Interior, under the act of February 13, 1862, extended simply to the "*purchase*," through necessary agents, of cotton-seed in, and its *removal* from, those portions of the cotton-growing States which were *occupied and controlled by forces of the United States engaged in the suppression of the rebellion*, and which by such occupation and control were excepted, by the President's proclamation of August 16, 1861, from the general prohibition of trade and the general character of insurrectionary districts.

II. That if the seed might lawfully be purchased in other places than those above described, the Secretary of the Interior had no authority under the act to permit or license the transportation of merchandise from a loyal State to any section of a State declared and being in insurrection against the United States, in order that the same might be there sold, and with the proceeds of such sale a cargo of cotton-seed might be there purchased.

III. That the Secretary of the Interior, by his letter of March 8, 1862, to William L. Hodge, did not authorize, and did not intend to authorize him, or any one, to transport, for the purposes that have been mentioned, a cargo of merchandise to that section of the State of Virginia with which commercial intercourse was prohibited under the statute of July 13, 1861.

If the court should be of opinion that the foregoing propositions are not sustainable in law, and should differently interpret the statute of 1862 and the letter of the Secretary of the Interior, then we contend :

IV. That the permission and license granted by the Secretary of the Interior to *William L. Hodge* "to

procure a cargo of cotton-seed in Virginia and bring it to Baltimore," cannot extend to the protection of the property of the present *claimants*, the vessel and cargo now before the court.

V. That one voyage from Baltimore to Virginia having been prosecuted by the claimants under the permission granted by the Secretary, that permission was exhausted, and, not having been renewed by competent authority, cannot avail to protect the property engaged in the present voyage from forfeiture.

VI. That the protection of the license of the Secretary of the Interior was forfeited by *mala-fides* and *fraud* practiced by the claimants.

VII. The indorsement of the Secretary of the Navy on the letter of the Interior Department cannot avail the claimants in this proceeding.

ARGUMENT.

THE CONSTRUCTION OF THE STATUTE.

I.

The first point we present is, that Congress, in the act of 1862, did not intend to authorize any commercial intercourse whatever with those portions of the rebel States with which trade was prohibited under the announcement in the President's proclamation of August 16, 1861, made in pursuance of the statute of July 13, 1861. In other words, we contend that the statute is not to be construed as relaxing in any way the prohibition against trade with those States or portions of States which might be legally in a condition of insurrection, and as such within the terms of the proclamation of August 16, 1861, or as conferring authority upon the Secretary of the Interior to license

any intercourse with such insurrectionary district, which, under the act of 1861, required the license of the President in order that it might be lawfully carried on. In this view of the act of 1862 it was not intended to impinge upon, or conflict with, the act of 1861, or to affect in any respect the special licensing power of the President conferred by that statute. The Secretary of the Interior was simply authorized to purchase cotton-seed in places where it might lawfully be bought—places with which trade could be carried on without violation of the statute of 1861.

When the President, by his proclamation of August 16, 1861, placed certain States in a legal condition of insurrection, he expressly excepted from that condition, and the consequences thereof, those parts of the enumerated States which might be "*from time to time occupied and controlled by forces of the United States engaged in the dispersion of the insurgents.*" (12 Statutes at Large, 1262.) With such places or districts commercial intercourse was not prohibited. They were not regarded, as this court has said, "as in actual insurrection, or their inhabitants as subject, in most respects, to treatment as enemies." (The Venice, 2 Wallace, 277.)

Now, our point is, that Congress, when it passed the act of February 13, 1862, and authorized the Secretary of the Interior to purchase cotton-seed in the most northern portions of the cotton-growing country, contemplated that many places in that country were, or would be, under our military control and occupation, and thus relieved, by the effect of the proclamation, from the general prohibition of trade and intercourse; and intended that all purchases of this article made by, or under the direction of, the Secretary of the Interior, and without the special license of the

President, should be made in those districts of the southern States where the national authority might have replaced rebel rule, and the inhabitants of which might have ceased to be public enemies. In this view of the statute of 1862 the Secretary of the Interior possessed no power to authorize any one, without the special license of the President, obtained under the act of 1861, to hold commercial intercourse with those parts of Virginia, or any other rebel State, which were not subject to the control, and in the possession of the armies, of the United States, and of which this government had not that "substantial, complete, and permanent" occupation which, in the case of *The Venice*, (supra,) this court has said was necessary to work the exception contained in the proclamation of August 16. Any authority given by that officer, purporting to authorize the purchase of cotton-seed in any district of an insurrectionary State not within that exception, was, in this view, null and void, as unwarranted by the act of 1862. The authority conferred on Mr. Hodge to "procure" a cargo of cotton-seed in Virginia must, thus, be construed as limited in its lawful exercise to those parts of Virginia which were, or might be, controlled by the national government, and the inhabitants of which had ceased to be *de jure* enemies of the United States. In attempting to execute the authority conferred by the Interior Department in Virginia beyond the limits of the places in that situation, the claimants incurred the penalties provided by the act of 1861 for holding unlicensed commercial intercourse with the enemy's country.

That the Secretary of the Interior himself construed the act of 1862 conformably to this view, we know from his report of April 29, 1862, to the House of Representatives, of his action pursuant to this statute. In that report he states, that shortly after the passage

of the law he employed an agent to "*visit that portion of North Carolina in possession of the troops of the United States under General Burnside to procure seed;*" and also that another agent had been sent to *Tennessee* to procure the seed for distribution in the northwest. It is also mentioned in the report that the persons thus employed were considered strictly the agents of the department, and not private speculators, and that they would be paid a reasonable compensation for the services actually rendered.

It is a little curious that no mention is made in this report of the permit given to Mr. Hodge. But the report clearly indicates that the Secretary had no idea that he had authority to purchase the seed in any place not under the control of the government, and quite as clearly that there was no necessity to open up trade with the enemy's country in order to execute fully the mandate of Congress.—(See *Report on Purchase and Distribution of Cotton-seed*, Executive Documents, 2d sess. 37th Congress, vol. 9, 1861–'62, p. 8.)

II.

We contend, in the second place, with reference to the construction of the statute, that even if the Secretary of the Interior had authority to purchase the seed in places not occupied and controlled by the national forces, he possessed no power to license or permit *the transportation of merchandise* to any State or section in a condition of insurrection and hostility, and with which trade was prohibited by the statute of 1861. Read the statute as one may, and but five things can be found in it: *First*, authority to "*purchase*" cotton-seed; *second*, provision of the *means* of purchasing it; *third*, designation of the *place* where it should be purchased; *fourth*, selection of the *officer* who

should carry the law into execution; *fifth*, authority to *distribute* the seed. That is the whole of the law.

Congress in the act said to the Secretary of the Interior: "Here is an appropriation *for the purchase of cotton-seed for general distribution*. Take the money out of the treasury, and with that money *buy* cotton-seed in the most northern section of the cotton-growing region." Now, at the date of the act, commercial intercourse between a large part of that section of the country and the rest of the United States was prohibited both by the general public law of war and the statute of July 13, 1861, which was declaratory and in aid of the public law. All merchandise coming from that section into other parts of the United States, and all merchandise proceeding there by land or water, together with the vessel or vehicle conveying the same, was liable, at the date of the act under consideration, to forfeiture to the United States. (12 Statutes at Large, 257.)

Let it be conceded that what Congress authorized to be done in the act of 1862 was forbidden by the act of 1861, and that it contemplated, in passing the act of 1862, commercial intercourse and dealing with the enemy, and authorized property to be placed under those conditions which, by the act of 1861, would subject it to forfeiture. The conclusion in that view would be that Congress intended to repeal the act of 1861 so far as it interfered with or prevented the due and lawful execution of the act of 1862. Wherever the later statute impinged upon the earlier, *there* it was intended, we may suppose, that the earlier statute should give way. The question, however, still remains, what was involved in the *due and lawful execution* of the act of 1862? The primary and essential thing was the "*purchase*" of cotton-seed in the insurrectionary territory. It might fairly be contended,

we think, that Congress intended that the purchases should be made with the very money appropriated by the act, and not with the private funds of any agent selected by the Department of the Interior to buy the article. But this view is not essential. It may be admitted that the Secretary of the Interior might lawfully have authorized an agent to go into the southern country, and there purchase quantities of this seed, on condition that he would afterwards dispose of so much as the department might need to the government.

It is insisted, however, that the authority did not extend beyond such an arrangement as that, and that he had no power to extend protection to any transaction in the insurrectionary territory, except the *purchase* of the required article.

Congress, then, in the first place, authorized any one designated by the Secretary of the Interior to *purchase*, with the funds of the government or with his own means, this article in the enemy's country. Two other things it may also have intended to authorize. The seed, when obtained, was to be *removed*. It was expressly required to be generally distributed for use in the north. Congress intended, therefore, to authorize a vessel, or vessels, to proceed to the place of purchase, and to return to the place at which the seed was to be distributed, with a cargo or cargoes of that article. This is a brief analytical view of what we conceive was involved in the due and lawful execution of the law of 1862.

The *first* step, in the order of time, was to reach the cotton-growing country with a vessel or other vehicle adequate to remove the seed after its purchase. The carriage of a cargo by such a vessel into the hostile country was a thing that Congress did not contemplate as within the scope of the execution of the

law. This is plain from the grant of the simple authority "to purchase" the seed, and the provision of the means of purchasing it. No commercial intercourse or dealing with the enemy was allowed, or intended to be allowed, which was not necessarily involved in, and did not of necessity flow from, "the purchase" of (the paying of money for) the article.

The *second* step in the execution of the law, after the country had been reached, with the means of removing the seed, was the "purchase" of the requisite quantity of the article from those who had it for sale. This implied, of course, commercial dealing with the enemy; and to the extent to which commercial intercourse was involved in the simple buying of the seed, such intercourse was intended to be protected by the law.

The *third* step necessary to the accomplishment of the purpose of the act was the removal of the article from the country of its growth to the north, where it was intended to be distributed. That transaction, and all the incidents of it, were intended, as we may suppose, to be within the protection of the act of Congress.

Every step thus indicated involved an act which could not have been lawfully done by anybody before the statute of 1862, without the special license of the President; and if done without such license, would have resulted in the forfeiture of all property engaged in the transaction. In so far, then, as the act of 1861 interfered with, or prevented, the consummation of any act which, according to the view now presented, was necessary to the due execution of the statute of 1862, that statute was designed to work a repeal of the earlier law. The Secretary of the Interior, therefore, had no power to permit anything to be done, and his authority cannot be

pleaded in defence of any act, not necessary, according to the foregoing view, to the lawful execution of the statute of 1862. His license could only be coextensive with the transactions involved in the execution of that statute. If it went beyond those transactions and attempted to legitimize others, beyond the defined scope of the law, it was void, to the extent that it was unauthorized by the law under which it issued, and to that extent could furnish no protection to the party holding it.

A few words now touching the theory of the claimants in regard to the construction of the act of 1862. They contend that under the power conferred upon the Secretary of the Interior to "purchase" and to authorize the purchase of cotton-seed, that officer might lawfully have permitted a cargo of general merchandise to be taken by private parties into the enemy's territory from the north, and there sold to the insurgents, for the purpose of enabling such parties to raise money wherewith to buy cotton-seed and bring it under the control of the government.

In other words, the position is, that the Secretary had not only the power to authorize the "*purchase*" of the seed, but also to authorize general trading with the interdicted territory, altogether *independent of, and distinct from*, that limited intercourse involved in the simple "purchase" of the article.

The purchase of the seed is one thing; the transportation and sale of merchandise constitute quite another and different thing. There is no necessary and natural connexion between them. They are distinct and independent transactions. Now we contend that, whether we look at the letter of the law of 1862, or at the general policy which was paramount in the country and with the government at the date of its enactment, no such construction of the law can be coun-

tenanced by this court. We have already shown that Congress authorized nothing but that single and simple thing, the "*purchase*" of cotton-seed, and conferred upon the Secretary of the Interior but one power, that of authorizing the "*purchase*" of the article. All commercial intercourse with the interdicted territory not involved in the single act of purchasing cotton-seed continued, after as before the passage of the law, subject to the provisions of the general and paramount statute of 1861. The President, after as well as before the act of 1861, alone possessed the power to license or permit such intercourse.

Every consideration, also, of policy forbids the latitudinarian construction urged upon the court by the defendants. The policy of the government, as expressed in the statutes of Congress and in the blockades enforced by the President, was to prevent and destroy all intercourse of a commercial kind with the whole rebel region. The high and delicate power of licensing intercourse with any part of this region Congress was willing to intrust to the President, and to *him* alone. The statute of 1862 was intended to be, to a limited extent, in derogation of the general legislation. *That legislation, however, must prevail, and the court should enforce it in every case, and in reference to every transaction, not fairly and fully within the express language of the act of* 1862.

That was the principle of construction adopted by Sir William Scott, in a memorable case, when he was called upon to interpret a special act of Parliament in derogation of the common maritime law of England, in time of hostility. (The Hoffnung, 2 C. Rob., 167.)

In conclusion, on this point, we ask the court to consider the disparity between the advantages gained respectively by the government and the insurgents,

under a system based upon the construction of the law contended for by the other side. Here is an appropriation of *three thousand dollars* for the purchase of cotton-seed. Now it is contended by the other side that Congress intended not only that this money should be expended in the interdicted territory, and for the benefit of the enemy, but that cargoes of assorted merchandise, worth twenty, or, it may be, (for the effect of the argument cannot be restrained,) a hundred times more than the whole amount of the appropriation, might be carried into that region of country, and distributed among the needy hostile population.

If this view of the law is sound, what limitations were imposed upon the discretion of the Secretary of the Interior as to the quantities or kinds of merchandise which he might allow to be introduced into this hostile country, or as to the places to which he might permit the shipments to be made? If he had authority to license the shipment of drugs, and clothes, and groceries—all these articles were on board of the "Reform"—he had power to permit munitions and implements of war to pass through the *cordon* of our blockade, into the hands of the soldiery, and into the arsenals, of the south. If medicines might have been carried, under his permit, to Fredericksburg, powder might have gone to feed the guns at Richmond. If, under his license, clothes could have gone to Richmond, food might safely have been sent to sustain a starving garrison at Charleston. The simple permit of the Secretary to "purchase" *cotton-seed* might have been set up in these cases with the same propriety, and with the same success, as in the case now before the court, if the view of the claimants shall be sustained.

Our proposition, then, is, that by virtue of the authority to "purchase" cotton-seed, conferred upon

the Secretary of the Interior by the act of February 13, 1862, that officer possessed no power to license or permit the transportation of merchandise into any section or State declared and being in insurrection against the United States; and that all merchandise proceeding to such State or section, under the permission of the Secretary, without the license of the President, and seized *in transitu*, was liable to forfeiture. by the provision of the 5th section of the act of July 13, 1861.

III.

CONSTRUCTION OF THE LETTER (OR LICENSE) OF THE SECRETARY.

The third point for consideration is, whether, conceding that he possessed the power, contrary to the view just presented, the Secretary did, in fact, by his letter of March 8, 1862, to William L. Hodge, authorize him to transport a cargo of assorted merchandise to insurrectionary Virginia, with the view that the goods might there be sold, and a cargo of cotton-seed purchased with the proceeds of such sale? We contend, however the law may be in regard to the question of power, that the Secretary did not confer, or intend to confer such authority upon Mr. Hodge, when he wrote the letter in question. (Record, p. 15.)

The intention of the Secretary must be ascertained from the words of the letter. Now, what did that document—which, for the sake of convenience, may be denominated a *license*—authorize the person to whom it was addressed to do? It authorized and appointed William L. Hodge to "*procure*" a cargo of cotton-seed in Virginia, and "*bring*" it to Baltimore. It is apparent that "*procure*," in this letter, is used

in the sense of "*purchase.*" We say this is apparent, because, in reciting the language of the act, the Secretary uses that word instead of the word "purchase," which is employed in the act. He says:

"Congress having authorized this department to '*procure*' [the word in the statute is '*purchase*'] cotton-seed for planting in the loyal States, I hereby authorize and appoint you to *procure* a cargo of the same in Virginia. * * * * This letter will be your authority to *procure* said seed; and all parties in employ of the United States are respectfully requested to allow you to pass freely for said purpose."

It is plain that the Secretary simply intended to authorize Mr. Hodge to do one thing, viz: purchase or buy the seed in Virginia. He certainly did not *in terms* authorize him to take a cargo of assorted and valuable merchandise to insurrectionary Virginia, and there sell his goods to enemies and rebels, in order that money might be raised with which to purchase the required article.

The question is, whether, by any sound principle of legal construction, applicable to the interpretation of such a document, authority to do all these things, *preparatory* to the "purchase" of the article, can be derived, by *implication*, from the words of the letter under consideration. We say not. We contend that, read with an eye single to the cardinal rules of law, adopted and approved by the highest judicial authorities, in all cases in which similar writings have come under review, this letter simply protected the person to whom it was addressed, in so far as the "*purchase*" of the article from the enemy was concerned, and conferred on him implied authority to prosecute a voyage with a vessel, *in ballast*, to the enemy's country, and to return to one of our own ports with a cargo of the desired article.

We have said that this letter may be denominated

a license. It is a license, and must be construed as such by the court. The general doctrine is, that trade with the enemy in time of hostility being generally unlawful, it is not in the power of a court to admit it beyond the degree which is *fairly described* in the terms of the license held by a party claiming exemption from the law of war. Such is the language of Sir William Scott in the case of the Jonge Klassina, 5 Rob., 301. See also the Juno, 2 Rob., 118; the Cosmopolite, 4 Rob., 12.

The adjudicated cases illustrative of this rule of judicial decision are numerous. In the case just cited, the *Jonge Klassina*, Mr. Ravie, a Birmingham manufacturer, and also the member of a mercantile firm in Amsterdam, obtained a license for the importation of certain goods from Holland into England. The court decided that the license could not operate to protect a shipment made by him to England, in person, from Holland, and as a member of the Dutch firm. The license was to import, and under it the court held the party could not himself become the exporter from the enemy's country. So a license to import on board of a neutral cannot afford protection to goods imported in a vessel of the belligerent country. (The Jonge Arend, 5 Rob., 14.) So, under a license to "British subjects" to import, the importation cannot be on the account of other than British merchants. (The Hoffnung, 2 Rob., 164.) So a license expressed in general terms to authorize a ship to sail from any port with a cargo will not authorize her to sail from a blockaded port with a cargo taken in there. (The Luna, Edwards, 190.) So permission for a ship to go to an enemy's port in ballast cannot authorize her to go with cargo, nor under a license to bring back a cargo of brandy can the vessel carry other goods.

(The Goede Hoop, Ib., 332, 337 ; The Catharina Maria, Ib., 338 ; The Wolfarth, Ib., 365 ; The Vriendschap, 4 Rob., 96.)

The class of cases in which it has been held that a license carries with it implied authority for the use of all the means *necessary* to the attainment of the end proposed, present no exception to the general doctrine illustrated by the foregoing authorities. They are, on the contrary, affirmative of that doctrine. Of that class is the case of *The Cornelia*, (Edwards, 360,) where a vessel was licensed in her home port to *import* a cargo from an enemy's port. Here it will be perceived that but one voyage was expressly authorized, and that was a voyage from the enemy's port to England. Yet the court held that the license was a sufficient protection for the vessel on her way to the port of lading. The outward voyage was regarded as a necessary means to the attainment of the end. But the court held that the protection was confined to the ship sailing *in ballast*. The taking on board of a cargo would have subjected both ship and goods to confiscation. (See also Le Cheminant *vs.* Pearson, 4 Taunt., 367.) On the same principle, it was held by Lord Stowell that a Danish vessel, licensed to import a cargo of corn into London, was protected by implication on her return voyage, after the delivery of the corn. (The Freundschaft, 1 Dod., 316.)

Again, where a license in terms authorizes the importation of *goods* from an enemy's country, it is, by the just construction of law, extended to the *vessel*. Indeed, the learned Mr. Duer says :

"The rule is doubtless universal that the license of a *cargo* embraces, by a necessary implication, the *vehicle of transportation*, if such as the license authorizes, or permits to be employed." (1 Duer on Insurance, 609, § 52.)

We think that the present case is ruled by the case of *The Cornelia*, just cited. The license here was to "purchase" or "procure" a cargo of cotton-seed in Virginia, and bring it to Baltimore. That was the specific authority granted. But some other authority was intended, we must presume, to be conferred by this grant, and may be inferred from it. The seed could not have been brought to Baltimore without a vessel, or other vehicle of transportation. Therefore, as in the case of *The Cornelia*, the court may infer that the intention of the grantor was to license the outward voyage of the vessel to the port of lading, and extend the protection of this license to the *vessel* on that voyage. But, under that authority, the license cannot be further extended by implication. The cargo carried outwardly from the port of departure must be regarded as not within the terms of the license, and as unprotected by it. The implied protection, in other words, must be regarded as confined to the vessel sailing in ballast from Baltimore to the port of lading in Virginia.

IV.

THE CLAIMANTS CANNOT ASSERT THE PROTECTION OF THIS LICENSE.

The Secretary of the Interior, as already shown, authorized and appointed "*William L. Hodge, Esq., of Washington City, D. C.,*" to procure the cotton-seed. The letter was declared to be *his* authority to procure the seed, and all persons in the employ of the United States were requested to allow *him* to pass freely for that purpose. (Record, p. 15.) John Bailey claims to be, and is conceded to be, the sole owner of this vessel. Nicholas G. Penniman claims to be, and

is conceded to be, the sole owner of the cargo. And yet they respectively set up a license granted expressly to William L. Hodge, and to no one else, as a defence to the present libel of the United States.

We respectfully ask, on what principle can this license be extended by the court to these parties, and their property? The doctrine of the courts of admiralty and common law is settled to be, that a license is not the subject of transfer or assignment, but that its legitimate use is confined to him for whose benefit it was originally granted.

Lord Stowell, with his usual perspicuity, states the reason of the doctrine to be, "that subjects are not to trade with the enemy, without the special permission of the government; and a material object of the control which government exercises over such trade is, that it may judge of the particular persons who are fit to be intrusted with an exemption from the ordinary restrictions of a state of war." (The Jonge Johannes, 4 Rob., 263.)

In that case, it appeared that Bridge & Smith obtained a license to import, as for themselves, their agents, or holders of their bills of lading. Lord Stowell held that the words admitted no other construction than that the grantees, in their own name, or by their agents, must be the original importers, on their own account, and that the license could only inure to their protection as such, or that of the persons to whom they had transferred their interest by an assignment of their bills of lading. As the claimants were themselves the importers, and not agents of the grantees or holders of their bills of lading, he condemned the property.

In the case of *The Aurora*, (4 Rob., 220,) the same doctrine was applied. In that case, it appeared that one Cunningham, of Belfast, obtained a license to im-

port goods from Teneriffe. After the goods were put on board of the vessel, contrary to the instructions of Cunningham, his agent at Teneriffe consented that the bills of lading should be made out to the order of the shippers. The court condemned the goods on the ground, among others, that the condition of the license that the goods were to be imported by Cunningham had not been complied with. (See, also, Barlow *vs.* Mackintosh, 12 East., 311.)

The cases in which it has been held that general and indefinite licenses, containing no mention of the persons by whom they are to be used, are the subjects of transfer, are less exceptions than examples of the general rule, that licenses are not assignable. (The Acteon, 2 Dod., 48; The Louisa Charlotte, 1 Dod., 308.)

The class of cases in which it is decided that the grantee, when named, must be truly described in the license, and that the privilege granted must be exercised in the character which the license attributes to him, also proceed on the same general doctrine of the impolicy and danger of allowing departures from the terms of the licenses. (The Jonge Classina, 5 Rob., 299 ; Klingender *vs.* Bond, 14 East., 484.)

Even where a license is granted to a particular person by name, on behalf of himself and *others*, those who are not named can only claim protection under it by showing that the person named obtained the license as their agent. (Rawlinson et al. *vs.* Janson, 12 East., 223 ; See, also, Warin *vs.* Scott, 4 Taunt., 605 ; Robinson *vs.* Morris, 5 Taunt., 725.)

In the remaining case under this head, to which we desire to call attention, (Busk *vs.* Bell, 16 East., 3.) Lord Ellenborough decided that "a license to trade to an enemy's country, granted to one set of British merchants, cannot be used to cover a trading by other British merchants, without connecting them together,

as, by showing that the licensees were agents at the time for the others.''

On this abundant authority, we claim that the owners of this vessel and cargo are not protected by the present license. They were not in law entitled to make use of it. No question of agency can arise, especially as the answer distinctly avers that Hodge, the licensee, obtained the license on his own account, and for his own use, and afterwards engaged the claimant to supply the cargo, and to execute the authority—the agreement being that the licensee should receive a portion of the profits expected to be derived from the proposed enterprise. (Record, p. 15.)

The facts of this case vindicate the wisdom and good policy of the rule of law which restrains the negotiability of documents like the one before the court. Mr. Hodge was, for aught that appears, a very proper person to be intrusted with such a license. It is quite clear that those who now claim its protection were not so trustworthy. They were the persons who resorted to false clearances, false manifests, and false oaths, to get their property, on two occasions, through the custom-house and out of the port of Baltimore. (See Record, p. 9.) The licensee had no part or share in these transactions of the claimants. The government had no reason to doubt his fidelity. This record shows that the confidence reposed in him would have been sadly misplaced if it had been reposed in them.

V.

THE LICENSE WAS EXHAUSTED BY THE FIRST VOYAGE TO VIRGINIA.

The letter of the Secretary of the Interior is dated March 8, 1862. Seven days afterwards (March 15)

the schooner "Joe Hunter" cleared at Baltimore for Cherrystone and Eastville, but sailed with a destination to Fredericksburg. She disposed of her cargo at that place, but failing to find cotton-seed there, as might have been expected, she took on board a quantity of tobacco, and returned to Baltimore.

Another voyage by a different vessel—the schooner "Reform"—was then arranged, and on the 3d of May she sailed from Baltimore under a false clearance, like the "Joe Hunter," and with a destination to the Rappahannock, where two months before no cotton-seed was found. The authority to Mr. Hodge was not renewed by the government, nor was any notice given to the Interior Department by the parties concerned of the failure of the first adventure.

The question, then, is whether, where a party has acted under such a license as this, and made a complete attempt to do what it authorized, the license may be allowed by the court, without evidence of express or implied renewal of it by the government, to continue in force and protect the party in a second employment of it?

We hold that the license of the Secretary of the Interior was *functus officio* when the voyage of the "Joe Hunter" was completed. It had no vitality after that. The Secretary, in contemplation of law, (nothing to the contrary appearing on the face of his letter,) intended to authorize but one voyage in prosecution of the object in question. The law presumes such an intention, because it cannot assume that the Secretary of the Interior meant to abandon to these claimants the decision of the important question whether a second voyage, under the circumstances surrounding the department and the country at the time the claimants proposed to prosecute it, was expedient or proper to be made. The ability of the

department to carry out the arrangement with Mr. Hodge may have been materially affected by circumstances occurring between the 8th of March, when the license was given, and the 3d of May, when the "Reform" cleared at Baltimore. Other supplies of the article may have been received after the date of the license, and still others may have been expected. The Secretary, on the 3d of May, may not have been in a position to continue the authority to Mr. Hodge. His relations to the whole subject may have changed during the two months that intervened between the granting of the license and the second effort of the parties to execute it. How the fact was does not appear; nor is it important. The argument is one of general application, that the Secretary must have meant to reserve to himself the power of deciding, when the contingency of an unsuccessful voyage should occur, whether, in view of the facts then existing, the authority to Hodge should be renewed or extended.

The Secretary knew, when the license issued, that events, powerfully affecting not only the policy of the department, but the state of the whole country, might transpire, which, on the happening of such a contingency, would render it highly inexpedient to renew the authority. It would be to assume either that that high public officer deliberately meant to abdicate his position, and to commit to these trading claimants the responsibility of determining whether further communication with the enemy's country was at any future time expedient to be allowed, or that he meant to grant to them an indefinite privilege of holding intercourse with that country whenever they pleased, provided only that the privilege should cease when a cargo of cotton-seed was procured—and with such a power in their hands they would, of course,

take good care that no cotton-seed should ever be found—it would be to assume one or other of these positions, we say, to hold that the Secretary of the Interior did not intend that those parties should report to him if their voyage turned out to be an unsuccessful one, and take his judgment on the propriety of renewing the attempt. This court cannot assume that the Secretary meant to do either one or other of these things.

The conclusion must, therefore, be that this license expired by implied limitation at the expiration of the first voyage prosecuted by these claimants to Virginia.

VI.

THE PROTECTION OF THE LICENSE WAS FORFEITED BY MALA FIDES AND FRAUD ON THE PART OF THE CLAIMANTS.

In the case of the *Speculation*, (Edw., 345,) Sir William Scott said :

> "There must in all these (*i. e.*, license) cases be an intention conformable to the objects for which the license has been granted."

That must affirmatively appear through the conduct and behavior of the parties. If it does not appear, the court will not allow the license the effect which is claimed for it. The parties must be able to show that they intended in good faith to carry out the object alone had in view by the government when it gave its permission to enter upon the illegal trade, and that there was an absence of everything like *mala fides* in their conduct and intentions. We submit whether there is any such showing in this case. We ask whether, taking all the facts as disclosed in the answer into view, the court is not rather led irresistibly to the conclusion that the parties claimant set out upon this voy-

age, not with an intention to accomplish in good faith solely the purpose of the government, but with a fraudulent intention to carry on that kind of trade with the enemy which might best subserve their own private ends, and which was not contemplated by the department under whose authority they were acting? We believe that there is abundant proof in this record on which to base, with legal propriety, the conclusion that these parties were not acting, in reference to this trade, with that *pure good faith* which the law requires should be manifested in all transactions under such an authority as this. (The Cosmopolite, 4 Rob., 12.)

The legal result must be the same, whether the court is of opinion that the claimants have failed to prove their good faith, or whether it can discover affirmative evidence of fraud.

The claimants, by what is disclosed in their answer, have thrown upon themselves the *onus* of showing, by more stringent proof than is ordinarily required, that they intended to execute this license in pure and simple good faith to the government. The transactions connected with the first voyage throw a dark shadow of suspicion over the voyage in question. We have seen that application was made in the first instance to the Secretary of the Treasury for a license under the act of 1861; that that officer refused to allow any vessel to visit Virginia to obtain cotton-seed, unless a bond, in a large amount, was executed by the licensee, conditioned that no cargo would be introduced into the enemy's country; that the offer of a license on these reasonable terms was rejected; and that application was made on the next day to the Interior Department for authority from it in the case.

We have seen that on obtaining the letter of the 8th of March, a cargo of assorted merchandise was obtained, not by the licensee, but by other parties, who had originally no interest in the license, and put on

board of a vessel, which then took out a simulated clearance for a place to which she was never destined, and sailed to Fredericksburg. We have seen that no cotton-seed was found there; that a cargo of tobacco was taken on board; and that, on returning to Baltimore, this cargo was sold by the claimants. They, of course, pocketed the profits of the outward and inward voyage.

We have seen that, without informing the department of these transactions, or consulting it with regard to the extension of its authority, they fitted out the present vessel with a cargo precisely like the previous cargo, and sailed under precisely the same circumstances as on the former occasion, for a place in the neighborhood of Fredericksburg.

The court below, on this state of facts, should have required, we think, the parties to have adduced the evidence on which they professed to believe that the second voyage would eventuate differently from the first; to have proved that, acting in pure good faith, they had good reason to suppose that cotton-seed would be procurable at the place of destination; and we think that this court, in the absence of such proof in the present record, should reverse the decree of restoration. The allegation of the parties that they expected to find cotton-seed on the Rappahannock will not suffice. They should disclose the grounds of that belief, if any they had, in order that the court may have the opportunity of passing upon them.

But more than this. We think that the character of the transactions at the custom-house shows that there was bad faith at the bottom of the whole enterprise. What excuse is offered for the clearance to Alexandria when the vessel was destined for Urbanna? Why were there articles on board of the vessel not disclosed by the manifest? What inducement could

there have been for the false oaths taken at the custom-house? Why were women's skirts, and hose, and gloves, and boots, and men's pants, and coats, and shirts stuffed into carpet-bags, as if for delivery on personal orders for particular people? (See Record, p. 9.) Why were these things done, or permitted, by the claimants, if they had but one object in view, and they intended in that pure good faith, which the law required at their hands, to carry out the purpose of the government, and that only, and had no ulterior design of breaking faith with the government, should the opportunity be presented, and bringing back, if the temptation occurred, not a cargo of cotton-seed, but a cargo of tobacco, or what not, for sale in Baltimore?

If they had faith in the protective power of the license of the Secretary of the Interior, and had no end to subserve but the lawful one of buying cotton-seed, these claimants would not have resorted to fraud and falsehood to get their vessel and cargo through the custom-house. Their course would have been a frank, open, and manly one. The license would have been shown to the collector and his officers. They would have awaited, with perfect composure, the determination of any question connected with it or the voyage, and abided patiently the decision of the proper authorities. That is the way men who wanted to serve the government in faith would have acted.

But these parties do nothing of the kind. They first decide that they had authority to take a cargo against the plain literal import of the license. They then refuse to make it known to the proper officer of the custom-house and of the Treasury, whose duty it was to determine the sufficiency of the authority under which they proposed to act. They then make out a false manifest, and obtain a simulated clearance. Under the cover of these documents they sail out of

port, and are surprised that any judicial notice should be taken of their conduct.

We think this court will see plainly that that conduct bears upon it such indications of a fraudulent purpose that it ought to deprive the parties of any benefit from the authority to which they appeal now for protoction.

VII.

THE INDORSEMENT OF THE SECRETARY OF THE NAVY ON THE LETTER OF THE SECRETARY OF THE INTERIOR.

The indorsement was, that "*Naval officers in command of ships-of-war respect the enclosed, and will afford protection in waters under their control and jurisdiction, inside of Chesapeake bay.*" (Record, p. 17.)

It is plain, in the first place, that the Secretary of the Navy, by thus writing on the back of the letter of March 8, 1862, did not intend to assume authority to confer any privilege or right upon the claimants which was not conferred by the Secretary of the Interior. He did not mean to say, "whether the Secretary of the Interior had authority or not to authorize you to transport a cargo to Virginia, in violation of the blockade and of the non-intercourse act, I confer upon you that privilege." He meant simply to protect the licensee in the execution of the authority, and that only, which the Secretary of the Interior had power, under the act of 1862, to confer upon him. The claimants, therefore, cannot appeal to the indorsement of the Secretary of the Navy as an independent source of authority, and as conferring privileges irrespective of any grant by the Department of the Interior.

In the second place, we observe, whatever may have been the intention of the Secretary of the Navy, he possessed no power to exempt these claimants, or their property, from the consequences of the blockade, to

relax the blockade in their behalf, or to license any intercourse with Virginia prohibited by the act of 1861. If the Secretary of the Interior had no power to authorize the claimants to enter Virginia with a cargo, or did not intend to confer on them such authority, or if, for any of the reasons heretofore urged, the claimants have forfeited the protection of this license, whatever its true construction may be, the indorsement of the Navy Department can be of no avail to the parties. It cannot avail them as a relaxation of the blockade, because the Secretary of the Navy has no power to mitigate the rigor of a blockade duly established and maintained by the President. It cannot take the claimants out of the operation of the act of 1861, because the President alone possessed power by that act to license and permit commercial intercourse with insurrectionary States or sections; and all such licensed intercourse could only be carried on in pursuance of regulations prescribed by the Secretary of the Treasury.

Even a relaxation of the blockade by competent authority would not have been sufficient to protect the property of the parties from the consequences of holding commercial intercourse with insurrectionary districts. The effect of the act of 1861 was to prohibit all such intercourse and forfeit all property seized *in transitu*, unless the intercourse was permitted, and the property was protected, by the express license of the President, granted in pursuance of the statute.

We respectfully submit, therefore, that the decree of the circuit court should be reversed, and the vessel and cargo condemned as forfeited to the United States.

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